REMARKS

Claims 1-11 are pending in this application. By this Amendment, claims 1 and 9 are amended and new claims 10 and 11 are added.

No new matter is added to the application by this Amendment. Support for new features added to claims 1 and 9 and for new claim 11 can be found in FIGS. 1 and 2, as originally filed, and within the specification, as originally filed, at, for example, page 2, lines 13-18 and page 7, lines 28-34. New claim 10 finds support within the specification, as originally filed, at, for example, page 6, lines 17-22.

Reconsideration of the application is respectfully requested.

I. Rejections Under 35 U.S.C. §103

A. Independent Claims 1 and 9 and Dependent claims 2-4 and 6-8

Claims 1-4 and 6-9 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable (a) over U.S. Patent Publication No. 2003/0047268 to Korchnak et al. (hereinafter "Korchnak") in view of U.S. Patent No. 6,114,004 to Cydzik et al. (hereinafter "Cydzik"); and claims 1-3 and 6-9 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent No. 5,166,007 to Smith et al. (hereinafter "Smith") in view of Cydzik. These rejections of the foregoing claims are respectfully traversed.

The Patent Office alleges that Korchnak and/or Smith teach all the features of the claims except a EVA foam body for sealing a crack. The Patent Office introduces Cydzik as allegedly remedying the deficiencies of Korchnak and/or Smith by allegedly teaching a sealing material, such as EVA, disposed within a cavity and heated by other heat source, so the sealing member may be foamed

and conform to the shape of the cavity. The Patent Office alleges that it would have been obvious to modify the invention of Korchnak and/or Smith by providing the EVA foam body of Cydzik because such material has a foaming temperature appropriate to the temperature range of the intended application, such as a cavity sealing article. Applicants respectfully disagree with these allegations by the Patent Office.

The Patent Office acknowledges that Korchnak and Smith do not teach or suggest a foam body for sealing a hole as required by claims 1 and 9. However, amended claim 1 requires that the non-foamingly unexpanded foam body only extends outward from the first adhesively treated side of the diecut and amended claim 9 requires the first adhesively treated side and the second side of the diecut define a plane of the diecut, wherein the non-foaminly unexpanded foam body is located completely outside of the plane of the diecut.

In contrast to the amended claims 1 and 9, Cydzik teaches a cavity sealing article having (a) a planar support member and (b) a sealing member comprising a foamable polymer surrounding and in intimate contact with the support member in the plane of the support member (see the abstract of Cydzik). FIGS. 1-11 of Cydzik illustrate that the unfoamed sealing member is always located within the plane defined by the support member. Moreover, FIG. 3 of Cydzik illustrates that the unfoamed sealing member is located within the plane defined by the support member and that the unfoamed sealing member extends outwardly in both directions away from the plane defined by the support member.

Thus, Korchnak and Cydzik or Smith and Cydzik fail to teach or suggest a

step of fixing an at least partly single-sidedly self-adhesively treated diecut having a backing, wherein the non-foamingly unexpanded foam body only extends outward from the first adhesively treated side of the diecut as recited in claim 1. Korchnak and Cydzik or Smith and Cydzik also fail to teach or suggest a step of fixing an at least partly single-sidedly self-adhesively treated diecut having a backing, wherein the first adhesively treated side and the second side of the diecut define a plane of the diecut, wherein the non-foaminly unexpanded foam body is located completely outside of the plane of the diecut as required by claim 9

Because these features of independent claims 1 and 9 are not taught or suggested by the combination of Korchnak and Cydzik or Smith and Cydzik, these references would not have rendered the features of independent claims 1 and 9 and their dependent claims obvious to one of ordinary skill in the art.

For at least these reasons, claims 1-4 and 6-9 are patentable over Korchnak and Cydzik or Smith and Cydzik. Thus, withdrawal of these rejections under 35 U.S.C. 103(a) are respectfully requested.

B. <u>Dependent Claim 5</u>

Claim 5 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Korchnak in view of Cydzik and further in view of U.S. Patent No. 3,689,320 to Ashcroft et al. (hereinafter "Ashcroft"); and claim 5 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Smith in view of Cydzik and further in view of Ashcroft. These rejections are respectfully traversed.

The Patent Office acknowledges that Korchnak and Cydzik or Smith and

Cydzik fail to teach or suggest weft count or warp count of woven fabrics, but introduces Ashcroft as allegedly teaching woven cotton fabric mechanical damping material having 72 wrap count and 60 weft count. The Patent Office alleges that it would have been obvious to modify the invention of Korchnak or Smith by providing weft count or warp count of woven fabrics because such alignments make the fabric to be easily compressed in the shape of body and also easily removed from the body, and further provides fabric with adequate absorptive property as suggested by Aschroft. Applicants respectfully disagree with these allegations by the Patent Office.

The Examiner relies on Ashcroft for specific weft and warp counts. No specific weft and warp counts could possibly overcome the deficiencies of Korchnak and Cydzik or the deficiencies of Smith and Cydzik as discussed above with respect to claim 1 from which claim 5 depends.

Accordingly, the rejections of claim 5 under 35 U.S.C. 103(a) as obvious over Korchnak and Cydzik in view of Ashcroft or Smith and Cydzik in view of Ashcroft should now be withdrawn.

II. New Claims

Applicants take this opportunity to submit that new claims 10 and 11 are also not anticipated and/or rendered obvious in view of the teachings of the cited references.

None of Korchnak, Smith, Cydzik and Ashcroft, taken singly or in combination, teaches or suggests an adhesive comprising at least one elastomer selected from a styrene-isoprene-styrene elastomer and a styrene-butadiene-styrene elastomer as recited in new dependent claim 10.

Moreover, none of Korchnak, Smith, Cydzik and Ashcroft, taken singly or in combination, teaches or suggests a step of fixing an at least partly single-sidedly self-adhesively treated diecut having a backing, said fixing being carried out on the hole in such a way that the hole is completely covered by the diecut and the unexpanded foam body is only located within the hole as required by new independent claim 11.

For at least these reasons, new claims 10 and 11 are not anticipated by and are patentable over the cited references.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-11 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Early and favorable action is earnestly solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,
NORRIS MCLAUGHLIN & MARCUS, P.A.

By /Brian C. Anscomb/

Brian C. Anscomb
Reg. No. 48,641
875 Third Avenue, 18th Floor
New York, New York 10022
Phone: (212) 808-0700
Fax: (212) 808-0844